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EXAMINER

VU, TUAN A

ART UNIT

PAPER NUMBER

2193

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/898,568

Applicant(s)

GUPTA, ARVIND

Examiner

Tuan A. Vu

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the Applicant's response filed 11/21/2006.

As indicated in Applicant's response, claims 1-2, 7-8, 20-21, 23-24 has been amended; claims 13-19 canceled; and claims 25-26 added. Claims 1-12, 20-26 are pending in the office action.

Claims Objections

2. Claims 2, 8, 21, and 24 are objected to because of the following informalities: the recited limitation '*determining the application program installer incorrectly identified the successful installation of the update*' is not formulated with standard English constructs and almost leads to a form of idiomatic English.

Based on Applicants' partial clarification put forth in the reply, one interpretation or construction of such incongruously phrased limitation could be:

determining that the application program installer has incorrectly identified the installation of the update to be a successful installation;

OR

determining whether the application program installer has incorrectly identified the installation as being successful.

The incoherently structured sentence as of now leads to more than one ways of interpreting and should it be maintained in this form would potentially lead to a rejection under USC 112 second paragraph in that the claim fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention; or a potential USC 112 first paragraph for not being supported by the specifications.

Correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12, 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basani et al., USPN: 6,748,447 (hereinafter Basani), in view of Mathur, USPN: 5,008,814 (hereinafter Mathur).

As per claim 1, Basani discloses a method comprising:

providing an update for altering network resources of a customer being served on one or more servers (e.g. *browser-based ... content ... configuration; notifies the user ... file changes, assignment ... removing ... modifying ... parameters* -- col. 5, lines 19 to col. 6, line 49; col. 7, lines 48-64; *individual components* - col. 20, lines 29-61; *configuration ... update* – col. 21, lines 40-52; col. 8, lines 47-61) of a hosting service (*hosted site* – col. 10, line 18-26; col. 8, lines 47-61);

selecting a first server of the cluster of hosting servers (e.g. *group leader 30a-b* – Fig. 1);

backing up a starting configuration of the first server(e.g. col. 19, lines 39-62);

determining a configuration for a multi-purpose application program installer to perform the update (e.g. col. 7, lines 45-57; col. 8, line 47 to col. 9, line 47 – **Note:** CCM's Group Leader servers using GUI interface – Fig. 2 -- for staging in conjunction with Content Update Job and database in regard to updateable application content or persisted WWW user's data – see col. 8,

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lines 47-61-- in order to update backend servers -- see *Content mover* -- col. 9, li. 26-38 -- read on multi-purpose application program installer); and

utilizing the multi-purpose application program installer (see console -- Fig. 2) to update to the resources of the one or more servers (e.g. *executables ... to install* -- col. 21, lines 39-52 -- Note: software executable to effect an installation read on application program installer; and the LAN and WAN aspect of large scale distribution and multi-services of the distribution tool reads on multipurpose -- see SUMMARY - col. 4-7; Fig. 1; col. 9, li. 26-38) and provide an indicator identifying at least success or failure of the applying the update (e.g. status report 315 -- Fig. 3);

the configuration treating said hosted network resources (*hosted site* -- col. 10, line 18-26; col. 8, lines 47-61) as if they were an application program updatable by said installer (e.g. *hosted site* -- col. 10, line 18-26 -- Note: a CCM's Group Leader servers using GUI interface or application tool - for staging in conjunction with Content Update Job in regard to updateable application content or persisted WWW user's data in order to update backend servers -- see *Content mover* -- col. 9, li. 26-38-- read on customer network resources being hosted and thereby treated via a GUI update installer console as WWW application data -- col. 8, lines 47-61; ... *enhanced security ... privacy; registration ... members* - col. 5-6; see col. 9, lines 12-16).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program based at least in part on the indicator.

However, Basani does disclose the concept of commit a requested assignment in conjunction with backup (col. 19, lines 37-57) as well as staging (or scheduling) for update

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following a tree top-down sequence of chosen servers (e.g. Fig. 6; *first GL in the list* – col. 16, lines 55-67) with rules to apply including rollback possibility (e.g. policies, rules, rollback, roll-out - col. 9, lines 22-42); that is, the concept of committing one target server at a time using an indicator that a rollback is to be effected is suggested. In a cluster of network devices wherein a leader device is being established for intra-cluster communication to receive and execute a command for update analogous to Group Leader of Basani, Mathur also discloses providing an update to be installed at a leader machine, one chosen first of the cluster of devices, and such upgrade software being tested before being dispatched to the rest of the cluster's nodes (e.g. Fig. 1; col. 4, lines 52 to col. 5, line 6; col. 6 lines 3-10) and also discloses determination for roll-out in case of failure during installation on any devices in the cluster (e.g. Fig. 2). It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide a trial machine, e.g. a first server as claimed, as taught by Mathur and implement the update installation trial to this first machine among the cluster of hosting servers by Basani so that upon failure thereof, determine to execute a backup-restore program to that trial machine as suggested by Mathur. Based on the concept to try before commit as suggested by Basani and further enhanced by Mathur, one skill in the art would be motivated to do this because it is more resource-efficient (and this falls under the same purport as Basani: col. 9, lines 60-67) to apply a trial on one sample chosen among a group of target machine and would make it easier to recover should a failure is detected upon such lead trial as suggested by Mathur.

As per claim 2,

Basani in view of Mathur discloses restoring the starting configuration of the first server with the backup-restore application program (Note: this *restore* limitation has been addressed in

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claim 1 above using Basani's commit and rollback teachings in conjunction with Mathur's trial installation applied to a first node prior to dispatching to the rest of the clusters and roll-back program).

As for the determining that the application program installer has incorrectly provided a false-positive indicator of a successful installation of the update and responsive thereto, Basani does not explicitly disclose a false indicator; and responsive thereto restoring the first server with a back-up restore program. However, the concept of determining whether a unsuccessful installation occurs, or whether a apparent success thereof is actually a failure would fall under the obvious ambit of determining a overall failure or conflict to an update as mentioned by Basani (see Fig. 3; *runtime conflict* – col. 10, lines 17-37); accordingly to which, Basani only discloses backup for roll back (col. 19, lines 37-57); hence the concept as to finding out whether an upgrade needs to be rolled back implies a determination by the installation process for finding out whether a installation has a conflict based on both a true or a false indicator therefor. Hence, one skill in the art at the time the invention was made would be motivated to categorize as conflict indication any indicator (about a installation runtime) whether it be a true or false indicator in regard to such installation outcome, in order to effect the above roll-back or restore as set forth in claim 1.

As per claims 3 and 4, Basani does not disclose selecting a second server of the hosting server but Mathur teaches committing being propagated from the master task node to a slave node using selective distribution (e.g. *exclude nodes ... not appropriate* - col. 8, lines 23-65 – Note: exclude inappropriate nodes is equivalent to selecting a second server) to the rest of the servers and distributing a successfully tried software to the rest of the cluster nodes as mentioned

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in claim 1; hence the combination as set forth in claim 1 is herein used to address the limitation as to selecting a second server and replicating the first server onto a second server to apply the update as well as utilizing the program installer to apply the update on the second server because of the same reasons included in the corresponding rejection of claim 1.

As pre claim 5, Basani (in view of Mathur) does not explicitly disclose that an update comprises differences between the network resources of hosted customer hosted by the hosting service and a new version of such resources prepared by the customer. It was a well-known concept that an update necessarily encompasses a difference between a current version held by a customer such that a newer version to be updated to and being requested by the customer within his/her preparing interface tool or browser environment. This a well known concept at the time the invention was made can be seen in Basani (see BACKGROUND: col. 4, li. 50-54; *version* - col. 9, lines 17-47; version control – col. 10, li. 55-60). Applying this concept to the altering of network resources by Basani and upgrade of cluster nodes as taught by Mathur, the limitation as to the update having a difference as taught by the above notice would have been obvious because there would be no need to update should there be no difference between the current version of resources at the customer's environment and the version held at the server level.

As per claim 6, Basani teaches update of data files and applications and records (e.g. database 68, file list/delta, versioning – Fig. 2)

As per claim 7, Basani discloses a machine-readable medium having program instructions for performing:

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providing an update for altering network resources of a customer served through one or more servers(e.g. *notifies the user, browser-based User interface* -- col. 5, lines 19; col. 8, lines 47-61) of a hosting service (*hosted site* – col. 10, line 18-26; col. 8, lines 47-61);

selecting a first server of the cluster of hosting servers (group leader 30a-b – Fig. 1);

backing up a starting configuration of the first server(e.g. col. 19, lines 39-62);

determining a configuration for a multi-purpose application program installer to perform the update (e.g. col. 7, lines 45-57; col. 8, line 47 to col. 9, line 47 ; Fig. 2 ; see col. 8, lines 47-61; col. 9, li. 26-38 – refer to Note in claim 1),

the configuration treating said hosted network resources (e.g. *hosted site* – col. 10, line 18-26; col. 8, lines 47-61) as if they were an application program updatable by said installer (e.g. *hosted site* – col. 10, line 18-26 ; col. 9, li. 26-38; col. 8, lines 47-61; ... *enhanced security* ... *privacy; registration* ... *members* - col. 5-6; see col. 9, lines 12-16 – refer to Note in claim 1); and

utilizing the multi-purpose application program to apply the update to the resources of the one or more servers (e.g. *executables ... to install* – col. 21, lines 39-52) and provide an indicator identifying at least success or failure of the applying the update (re claim 1).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program based at least in part on the indicator. But these limitations are already addressed in claim 1 using the combination of Basani, in view of Mathur's teachings.

As per claims 8-10, refer to corresponding rejection as set forth in claims 2-4 respectively.

As per claims 11-12, refer to corresponding rejection as set forth in claims 5-6 respectively.

As per claim 20, Basani discloses a method for implementing a new use for an application program installer operable to install an application program (e.g. *executables ... to install* – col. 21, lines 39-52) and rollback an installation if it appears unsuccessful, and a backup-restore program to backup and restore (e.g. col. 19, lines 39-62) a configuration of a machine, the method comprising the steps of :

providing an update for altering (e.g. *notifies the user, browser-based User interface --* col. 5, lines 19-62 – Note: user request for a alteration being notified via an interface is equivalent to update for altering resources of a user serviced via a group of servers) network resources of a customer (*hosted site* – col. 10, line 18-26; col. 8, lines 47-61) hosted one or more hosting servers of a hosting service;

selecting a first server of the cluster of hosting servers (e.g. *group leader 30a-b* – Fig. 1);

backing up a starting configuration at one first server (e.g. col. 19, lines 39-62);

determining a configuration for a multi-purpose application program installer to perform the update (e.g. col. 7, lines 45-57; col. 8, line 47 to col. 9, line 47 ; Fig. 2 ; see col. 8; lines 47-61; col. 9, li. 26-38 – refer to Note in claim 1),

the configuration treating said hosted network resources (e.g. *hosted site* – col. 10, line 18-26; col. 8, lines 47-61) as if they were an application program updatable by said installer (e.g. *hosted site* – col. 10, line 18-26 ; col. 9, li. 26-38; col. 8, lines 47-61; ... *enhanced security*

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... *privacy; registration ... members* - col. 5-6; see col. 9, lines 12-16 – refer to Note in claim 1);

and

utilizing an application program to install the update to the resources of the first server (e.g. *executables ... to install* – col. 21, lines 39-52; Fig. 6; *first GL in the list* – col. 16, lines 55-67).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program. But these limitations are already addressed in claim 1 using the combination of Basani, and Mathur's teachings.

As per claims 21, refer to the rationale as set forth in claim 2.

As per claim 22, refer to corresponding rejection as set forth in claim 3 respectively.

As per claim 23, Basani discloses a method for utilizing a multi-purpose application program installer to provide an update for altering network resources of a customer being served on one or more servers (e.g. *brower-based ... content ... configuration; notifies the user ... file changes, assignment ... removing ... modifying ... parameters* -- col. 5, lines 19 to col. 6, line 49; col. 8, lines 47-61; col. 7, lines 48-64; *individual components* - col. 20, lines 29-61; *configuration ... update* – col. 21, lines 40-52) of a hosting service (*hosted site* – col. 10, line 18-26; col. 8, lines 47-61), comprising:

selecting a first server of the cluster of hosting servers (e.g. *group leader 30a-b* – Fig. 1);

backing up a starting configuration at one first server (e.g. col. 19, lines 39-62);

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determining a configuration for a multi-purpose application program installer to perform the update, said multi-purpose installer to provide an indicator identifying at least success or failure of performing an update according to the configuration (refer to claim 1);

the configuration treating said hosted network resources as if they were an application program updatable by said installer (refer to claim 1); and

utilizing a multi-purpose application program installer to update to the resources of the first server (e.g. *executables ... to install* – col. 21, lines 39-52; Fig. 6; *first GL in the list* – col. 16, lines 55-67).

But Basani does not disclose based on the indicator associated with applying the update backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program. However, these limitations have been addressed in claim 1 above.

As per claim 24, in reference to claim 1, this claim includes the limitations that correspond to those of claim 2; hence incorporates the corresponding rejections as set forth therein respectively.

As per claim 25, Basani discloses method for updating network resources of a customer being hosted on one or more hosting servers (*hosted site* – col. 10, line 18-26; col. 8, lines 47-61), comprising:

selecting at least a first server of the hosting servers (*group leader 30a-b* – Fig. 1);

backing up a starting configuration of the first server (e.g. col. 19, lines 39-62);

determining a configuration for a multi-purpose application program installer to perform the update (re claim 1),

the configuration treating said hosted network resources as if they were an application program updatable by said installer (re claim 1);

utilizing the multi-purpose application program installer to apply the update to the network resources of the customer on the first server (*executables ... to install* – col. 21, lines 39-52; Fig. 6; *first GL in the list* – col. 16, lines 55-67).

But Basani does not explicitly disclose determining whether an operating system of the first server has failed after said updating the first server, and if so, restoring the starting configuration of the first server with a backup-restore application program. However, these limitations have been addressed in claim 1 above.

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Basani et al., USPN: 6,748,447; and Mathur, USPN: 5,008,814; and further in view of Mishra et al., USPN: 6523166 (hereinafter Mishra).

As per claim 26, Basani (in view of Mathur) does not disclose wherein the multi-purpose application program installer is an MSI class of application program. Similar to Basani at the time the invention was made, Mishra discloses using a Microsoft multi-application installer with rollback program (see Mishra: Fig. 4) to enable cross-network installation of LAN protocol-based machines (see Mishra: Fig. 1-2) in regard to web's user application data using *msi* package install (see Mishra: col. 7, lines 27-48; Fig. 4-9), wherein objects can be specified using a GUI tool and policy compliance checking (see Fig. 3), which is analogous to Basani's console performing administrative update/installation functions with database support to effect

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protocol-compliant installation (e.g. see Basani: col. 9, lines 17-56; col. 10, lines 39-54). It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide Basani's console tool with MSI package with instantiation of objects capability because this Microsoft installer enables package encapsulation of objects (see descriptor by Mishra) to be effectuated from simple GUI user's specifications, so to allow per-need basis creation Object-Oriented application data according to policies and rules compliant to communication scheme with middleware and multi-tiers interface network (e.g. Mishra: Group Policy – Fig. 3-4); that is, this form of MSI package developing would enable any user or administrator to implement as-needed and per-policy basis requests to obtain data or to submit update request (see Mishra: col. 4, line 60 to col. 5, line 27) in Microsoft-based browser and Web applications as purported by both Basani and Mishra, which entails communication across multi-platform recipient or sites with different protocol or policies.

Response to Arguments

6. Applicant's arguments filed 11/21/2006 have been fully considered but they are either moot in light of the new grounds of rejection or not persuasive. Following are the observations in regard thereto.

As for the argument about a multi-purpose installer to update resources so that these *are treated as application program* being updatable (Appl. Rmrks, pg. 13), the rejection has set forth the rationale as to how the teachings by Basani treats a installer that update hosting server and content therein in that the update content are considered WWW user-related data pertinent to their business data being hosted, i.e. application data related to user's interaction with the services.

The argument about MSI installer (Appl. Rmrks, pg. 14) has been addressed in a new ground of rejection.

And the arguments about a false indicator, and its implication in the rollback at the first server (Appl. Rmrks pg. 15) are considered in the sense that this indicator amounts to a new limitation that would necessitate new grounds of rejection; and as a whole, new grounds of rejection have been effectuated to address the changes to the subject matter being claimed.

The claims stand rejected as set forth in the Office Action.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (272) 272-3735. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

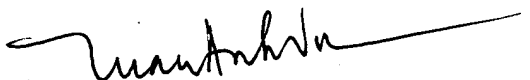
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571)272-3756.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3735 (for non-official correspondence - please consult Examiner before using) or 571-273-8300 (for official correspondence) or redirected to customer service at 571-272-3609.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan A Vu
Patent Examiner,
Art Unit 2193
February 6, 2007